

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION MDL No. 2804
OPIATE LITIGATION Case No. 17-md-2804

This document relates to: Judge Dan
Aaron Polster

The County of Cuyahoga v. Purdue
Pharma, L.P., et al.
Case No. 17-OP-45005

City of Cleveland, Ohio vs. Purdue
Pharma, L.P., et al.
Case No. 18-OP-45132

The County of Summit, Ohio,
et al. v. Purdue Pharma, L.P.,
et al.
Case No. 18-OP-45090

VOLUME I
Videotaped Deposition of Kyle J. Wright
Washington, D.C.
February 28, 2019
9:33 a.m.

Reported by: Bonnie L. Russo
Job No. 3244302

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1 MR. TAYMAN: Why don't we have the
2 question read back and let him answer it again.
3 MR. O'CONNOR: Would you mind
4 reading the last question back.
5 (The record was read as requested.)
6 THE WITNESS: I'm having a lot of
7 difficulty answering your question. Because
8 you're transposing "excessive" and
9 "suspicious."
10 MR. O'CONNOR: Uh-huh.
11 THE WITNESS: Excessive did not
12 report suspicious. And it reported excessive.
13 And that was the limit of its foundation.
14 BY MR. O'CONNOR:
15 Q. So excessive orders are different
16 from suspicious orders?
17 MR. MIGLIORI: Objection.
18 THE WITNESS: If they reached
19 arbitrary benchmark that whoever decided to do
20 the report set. Once it reached it, that's all
21 there was to it.
22 BY MR. O'CONNOR:
23 Q. But to be clear, do you believe that
24 excessive orders are different from suspicious?
25 MR. MIGLIORI: Objection.

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1 THE WITNESS: Earlier today we
2 talked about the distributor briefing. And
3 inside that debriefing is the context or a
4 repeat of the federal regulation. Those are
5 the criteria for suspicious orders.
6 A suspicious order does not mean
7 that -- there's nowhere in that definition of
8 the -- under CFR of a suspicious order of
9 saying it reached a bench -- arbitrary
10 benchmark. That's the difference between
11 excessive and suspicious.
12 BY MR. O'CONNOR:
13 Q. Okay. Is it fair to say that not
14 all orders reported as suspicious are likely to
15 be diverted?
16 MR. BENNETT: Objection.
17 THE WITNESS: I'm going to
18 regurgitate your question to you.
19 That you're saying that a suspicious
20 order does not necessarily mean that there's an
21 illicit act.
22 MR. O'CONNOR: Okay.
23 MR. SHKOLNIK: Object to the form of
24 the reforming of the question.
25 MR. O'CONNOR: Your -- your

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1 objection was to his question?
2 MR. SHKOLNIK: Yes.
3 MR. O'CONNOR: All right.
4 BY MR. O'CONNOR:
5 Q. With respect to the suspicious
6 orders that were reported to DEA, is it fair to
7 say that there were a large number of false
8 positives?
9 MR. BENNETT: Objection to form.
10 THE WITNESS: Because a suspicious,
11 there could be a false positive. As to the
12 quantity, I cannot stipulate.
13 BY MR. O'CONNOR:
14 Q. Isn't it true that there were a
15 large number of suspicious orders that were
16 reported to DEA that were not, in fact, likely
17 to be diverted?
18 MR. BENNETT: Objection to the form.
19 THE WITNESS: I know --
20 BY MR. O'CONNOR:
21 Q. You can answer the question.
22 A. I know that there was a quantity.
23 As to the extent of that quantity being large
24 or not large, I don't know.
25 MR. O'CONNOR: All right. I'm going

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1 mark Exhibit No. 29.
2 (Deposition Exhibit 29 was marked
3 for identification.)
4 MR. O'CONNOR: Counsel, could the
5 witness read his copy?
6 MR. BENNETT: Give me one second.
7 MR. MIGLIORI: You said 29, right?
8 MR. O'CONNOR: Yeah. Exhibit 29.
9 And for the record, it's US DEA 00007691.
10 MR. BENNETT: Don't answer anything
11 yet.
12 BY MR. O'CONNOR:
13 Q. This is an e-mail exchange between
14 you and Ruth Carter, correct?
15 MR. BENNETT: Counsel, hang on one
16 second. We're having it reviewed by DEA
17 counsel to see if there's any basis for any
18 objections or any concerns with this document.
19 Can we hold off on the question for
20 a moment, please.
21 MR. O'CONNOR: Sure.
22 MR. BENNETT: Thank you.
23 To the extent that this may refer to
24 a specific investigation, the witness is not
25 authorized to answer any questions about that

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

IN RE: NATIONAL : HON. DAN A.
PRESCRIPTION OPIATE : POLSTER
LITIGATION :
:
APPLIES TO ALL CASES : NO.
: 1:17-MD-2804
:

- HIGHLY CONFIDENTIAL -

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

VOLUME I

- - -

April 17, 2019

- - -

Videotaped deposition of
THOMAS PREVOZNIK, taken pursuant to
notice, was held at the law offices of
Williams & Connolly, 725 12th Street,
Washington, D.C., beginning at 9:11 a.m.,
on the above date, before Michelle L.
Gray, a Registered Professional Reporter,
Certified Shorthand Reporter, Certified
Realtime Reporter, and Notary Public.

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<p style="text-align: right;">Page 306</p> <p>1 Does every order that's</p> <p>2 unusually large necessarily lead to</p> <p>3 diversion?</p> <p>4 A. I have no idea.</p> <p>5 MS. SINGER: Objection.</p> <p>6 Scope.</p> <p>7 THE WITNESS: I have no idea</p> <p>8 what you mean by unusually large.</p> <p>9 BY MR. O'CONNOR:</p> <p>10 Q. Okay. As the term</p> <p>11 "unusually large" is used in the</p> <p>12 suspicious order monitoring regulation,</p> <p>13 are orders that are unusually large</p> <p>14 necessarily diverted?</p> <p>15 A. Well, for example, a bottle</p> <p>16 of 100 Vicodin from a manufacturer to a</p> <p>17 vet, is that unusually large?</p> <p>18 Q. Is it?</p> <p>19 A. I don't think it's unusually</p> <p>20 large, but it would raise my eyebrows of</p> <p>21 why would -- why would a vet be ordering</p> <p>22 that bottle when they know that the</p> <p>23 toxicity to cats and dogs would kill</p> <p>24 them. So I don't think you can just look</p>	<p style="text-align: right;">Page 308</p> <p>1 THE WITNESS: It may or</p> <p>2 may -- it may or may not.</p> <p>3 BY MR. O'CONNOR:</p> <p>4 Q. Would the same be true of an</p> <p>5 unusually frequent order?</p> <p>6 MR. FINKELSTEIN: Same</p> <p>7 objection. You can answer.</p> <p>8 THE WITNESS: Correct. It</p> <p>9 may or may not.</p> <p>10 BY MR. O'CONNOR:</p> <p>11 Q. And the same would be true</p> <p>12 of an order that deviates substantially</p> <p>13 from the normal pattern?</p> <p>14 MR. FINKELSTEIN: Same</p> <p>15 objection. You can answer.</p> <p>16 THE WITNESS: Correct. It</p> <p>17 may or may not.</p> <p>18 BY MR. O'CONNOR:</p> <p>19 Q. Okay. And putting that</p> <p>20 together, that means that not every</p> <p>21 suspicious order leads to diversion,</p> <p>22 correct?</p> <p>23 MR. FINKELSTEIN: Objection.</p> <p>24 Scope. You can answer.</p>
<p style="text-align: right;">Page 307</p> <p>1 at a number and say that's too big.</p> <p>2 MR. O'CONNOR: Whoever is on</p> <p>3 the phone needs to go on mute.</p> <p>4 MR. FINKELSTEIN: Whoever is</p> <p>5 on the phone please mute your</p> <p>6 phone.</p> <p>7 BY MR. O'CONNOR:</p> <p>8 Q. Before we get back to my</p> <p>9 question, I just want to be clear.</p> <p>10 Are -- are vets required to obtain a DEA</p> <p>11 registration before they order controlled</p> <p>12 substances?</p> <p>13 A. Yes.</p> <p>14 Q. And the DEA issues some</p> <p>15 veterinarians registrations to allow them</p> <p>16 to purchase controlled substances?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. I do -- I do want to</p> <p>19 get back to my original question though,</p> <p>20 which was, is an order that is unusually</p> <p>21 large, does that order necessarily lead</p> <p>22 to diversion?</p> <p>23 MR. FINKELSTEIN: Objection.</p> <p>24 Vague.</p>	<p style="text-align: right;">Page 309</p> <p>1 THE WITNESS: Could you</p> <p>2 please repeat that?</p> <p>3 BY MR. O'CONNOR:</p> <p>4 Q. Not every suspicious order</p> <p>5 leads to diversion, correct?</p> <p>6 A. Correct.</p> <p>7 Q. I want to talk a little bit</p> <p>8 about how suspicious order reports are --</p> <p>9 are used within DEA.</p> <p>10 Is it fair to say that most</p> <p>11 suspicious order reports are submitted to</p> <p>12 field offices?</p> <p>13 A. I would say based on the</p> <p>14 fact that the big three are filing</p> <p>15 electronically, I would say the majority</p> <p>16 electronically.</p> <p>17 Q. When an order or when</p> <p>18 suspicious order reports are filed</p> <p>19 electronically, does that mean they are</p> <p>20 filed with headquarters?</p> <p>21 A. Yes. On the Legacy and the</p> <p>22 vetted system.</p> <p>23 Q. Okay. And do registrants</p> <p>24 that are not reporting electronically to</p>

78 (Pages 306 to 309)

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Expert Report of Professor Thomas McGuire

Damages to Bellwethers

March 25, 2019

public health, social services, and criminal justice consequences, including the fueling of addiction and overdose from illicit drugs such as heroin.”⁷ The Bellwether governments further allege that the opioid epidemic and the need for increased services, “arose from the opioid manufacturers’ deliberately deceptive marketing strategy to expand opioid use, together with the distributors’ equally deliberate efforts to evade restriction on opioid distribution.”⁸ I refer to these actions collectively as “defendants’ misconduct.” I refer to the adverse health, public health, public welfare and criminal justice consequences of the opioid epidemic as “harms.” Finally, upon instruction from counsel, I refer to the cost consequences of harms to the Bellwether governments due to defendants’ misconduct as “damages.” In discussing opioids, I follow the CDC’s definition, which includes both legal and illicit opioids.⁹

7. My assignment is as follows:

- *Economic framework for damages.* Do you have an opinion, to a reasonable degree of certainty in the area of applied microeconomics, as to whether there is a valid economic methodology for attributing a share of Bellwether government costs to defendants’ misconduct; that is, to attribute damages to defendants’ misconduct?

⁷ *In Re National Prescription Opiate Litigation*, The County of Cuyahoga, Ohio, et al., v. Purdue Pharma L.P., et al., Case No. 17-OP-45004, Second Amended Complaint, May 18, 2018, (“Cuyahoga Complaint”), ¶19; *In Re National Prescription Opiate Litigation*, The County of Summit, Ohio, et al., v. Purdue Pharma L.P., et al., Case No. 17-md-2804, Corrected Second Amended Complaint, May 18, 2018, (“Summit Complaint”), ¶20.

⁸ Cuyahoga Complaint, ¶13, Summit Complaint ¶13.

⁹ CDC define opioids as, “[n]atural or synthetic chemicals that interact with opioid receptors on nerve cells in the body and brain and reduce the intensity of pain signals and feelings of pain.” This definition includes the illegal drug heroin; synthetic opioids such as fentanyl; and prescription pain medications, such as oxycodone, hydrocodone, codeine and morphine. Centers for Disease Control and Prevention, “Opioid Overdose, Commonly Used Terms,” [cdc.gov/drugoverdose/opioids/terms.html](https://www.cdc.gov/drugoverdose/opioids/terms.html), accessed, 1/11/2019.

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- *Bellwether government departments and divisions affected.* Do you have an opinion, to a reasonable degree of certainty in the area of applied microeconomics, as to whether one may identify the departments and divisions¹⁰ of the Bellwether governments which would incur costs as a direct or indirect result of opioid-related public health issues starting in 2006 and continuing through 2018? If departments and divisions may be identified, what are those departments and divisions?
- *Estimation of government costs.* Do you have an opinion, to a reasonable degree of certainty in the area of applied microeconomics, as to whether one may identify the costs at the divisions of the Bellwether governments which may be attributable to defendants' misconduct starting in 2006 and continuing through 2018? If they can be reasonably estimated, what is your opinion as to the amount of those costs, both in total and broken out by each Bellwether government and by budgetary components?
- *Estimation of damages.* If a valid framework for assigning a share of Bellwether government costs to damages does exist, what is your opinion, to a reasonable degree of certainty in the area of applied microeconomics, as to the amount of those damages, both in total and broken out by each Bellwether government and by budgetary components starting in 2006 and continuing through 2018?

C. Summary of Opinions

8. *The economic framework for damages is reliable and well-supported.* I am of the opinion, to a reasonable degree of certainty in the area of applied microeconomics, that the

¹⁰ Hereafter, I will use the term "division" when referring generally to a department or division of a Bellwether government and to the actual name (e.g., Police Department) when referring to a particular division or department.

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economic framework for determining damages, described in more detail in Section II, is an economically appropriate approach for identifying the costs incurred by the Bellwether governments as a result of defendants' misconduct. The damage framework is based on a straightforward chain of reasoning that links (i) misrepresentations by manufacturer defendants and failure to detect and prevent excessive opioid shipments by all registrants of the Controlled Substances Act ("CSA"), including the distributor defendants, to greater shipments of prescription opioids; (ii) increases in prescription opioid shipments to increases in harms (e.g., crime, overdoses) in the Bellwether jurisdictions; and (iii) increases in harms to costs faced by Bellwether governments which devoted resources to contend with these harms.

9. *The affected divisions can be reliably identified.* Through review of the Bellwether governments' budgets and expenditures and interviews with Bellwether government personnel, I have identified certain divisions that are affected by the opioid epidemic, listed here in Table IV.1.¹¹ The basis of this determination is discussed in Section III below.

Table IV.1: Bellwether Divisions Affected by Opioids

Bellwether Government	Affected Divisions
Cuyahoga County	ADAMHS Board, Division of Children and Family Services, Office of Prosecutor, Office of Public Defender, Court of Common Pleas, Juvenile Court, Sheriff's Office, County Jail, Office of Medical Examiner
Summit County	ADM Board, Children Services Board, Prosecutor, Court of Common Pleas, Juvenile Court, Sheriff's Office, County Jail, Alternative Corrections, Adult Probation, Medical Examiner

Source: Tables IV.3 and IV.4.

10. *The costs faced by Bellwether jurisdictions in responding to harms can be reliably estimated.* Standard methods from microeconomics allow me to reliably estimate past costs

¹¹ As discussed in Section III, my selection focused on the largest divisions and, therefore, may omit other divisions in the Bellwether governments that were also affected.

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March 25, 2019

A handwritten signature in black ink, appearing to be 'R' followed by a long horizontal stroke and a small upward tick at the end.

Thomas McGuire